

## **921 KAR 3:070. Fair hearings.**

RELATES TO: KRS Chapter 13B, 23A.010, 45.237, 205.231, 7 C.F.R. 273.15

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.15 requires the agency administering SNAP to provide a hearing system for any SNAP applicant or recipient who is dissatisfied with an agency decision or action. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program.

Section 1. Opportunity for Fair Hearing. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction:

- (a) On the part of the cabinet; and
- (b) That affects the SNAP benefits of the household.

(2) A fair hearing shall be conducted:

- (a) On a state level;
- (b) By a hearing officer assigned by the Division of Administrative Hearings and
- (c) At:

- 1. The local office administering the benefits of the appellant; or
- 2. An alternate site, if the appellant:

- a. Is unable to travel to the local office; and
- b. Requests an alternate site.

(3) If consent is obtained from each party required to testify under oath, a telephonic hearing may be conducted.

(4) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(i).

(5) An administrative hearing shall be conducted in accordance with KRS Chapter 13B, this administrative regulation, the Correspondence from the Office of Attorney General dated June 4, 2014, and the Correspondence from the Office of Attorney General dated April 5, 2012.

Section 2. Notification of Hearing Rights. (1) When a participant applies, he or she shall receive written notification of the:

- (a) Right to a hearing;
- (b) Procedures for requesting a hearing, as specified in Section 4 of this administrative regulation; and

(c) In accordance with 7 C.F.R. 273.15(f), option to designate a representative for a hearing, such as:

- 1. Legal counsel;
- 2. A relative;

3. A friend; or
4. An individual to act on behalf of the participant.

(2) Written notification shall be provided to remind a participant of the right to request a fair hearing if:

- (a) An action is taken that affects the benefits of the participant; or
- (b) The participant disagrees with an action taken by the cabinet and expresses this disagreement to the cabinet.

(3) The participant shall be informed in writing of the availability of free representation from legal aid or other organizations within the community.

Section 3. Timeframe for a Hearing Request. (1) Within a certification period, an active household may request a fair hearing to dispute current benefits.

(2) In accordance with the timeframes of 7 C.F.R. 273.15(g), a SNAP household may request a hearing on any cabinet action.

(3) If a hearing officer determines an appellant meets good cause criteria in accordance with Section 8 of this administrative regulation, the appellant shall be granted an additional thirty (30) days to submit a hearing request.

Section 4. Request for a Hearing. (1) The request for a hearing shall clearly state the reason for the request.

(2) If the reason for the request is unclear, the cabinet may request additional clarification from the appellant.

(3) In accordance with 7 C.F.R. 273.15(h), a request for a hearing shall not be interfered with or limited in any way.

(4) Upon request, and in accordance with 7 C.F.R. 273.15(i), the cabinet shall:

- (a) Help an appellant with a hearing request; and
- (b) Make available, without charge, the materials necessary for an appellant to:
  1. Determine whether a hearing may be requested; or
  2. Prepare for a hearing.

(5) As determined by the hearing officer, an appellant may have the hearing process expedited in accordance with 7 C.F.R. 273.15(i)(2).

Section 5. Notice of Hearing. (1) The Division of Administrative Hearings shall acknowledge a hearing request by issuing a notice of hearing.

(2) The notice of the hearing shall:

(a) Comply with the requirements of KRS 13B.050(3), subject to the exemption granted by the attorney general in the Correspondence from the Office of Attorney General dated June 4, 2014. The notice shall provide all parties involved with ten (10) days advance written notice of an administrative hearing, and the notice shall not be less than ten (10) days prior to the hearing, unless requested by the appellant;

(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and

(c) Specify that the hearing request shall be dismissed if an appellant or representative fails to appear for a hearing without good cause as specified in Section 8(2) of this administrative regulation.

(3) In accordance with 7 C.F.R. 273.15(l), unless an appellant's request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

(4) The appellant may:

- (a) Waive the right to certified mail delivery under KRS 13B.050; and
- (b) Select another method of delivery, such as electronic or first class mail.

Section 6. Continuation of Benefits. Unless the appellant requests a discontinuance of benefits, benefits shall be continued, in accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) In accordance with 7 C.F.R. 273.15(c), within sixty (60) days of a request for a fair hearing, the cabinet shall:

- (a) Acknowledge the request in accordance with Section 5 of this administrative regulation;
  - (b) Conduct a hearing; and
  - (c) Issue a final order.
- (2) In accordance with 7 C.F.R. 273.15(c), benefits shall be adjusted:
- (a) Within ten (10) days of the final order; or
  - (b) With the next issuance following receipt of the final order.
- (3) If an appellant requests a postponement of a hearing, the:
- (a) Hearing shall be postponed;
  - (b) Postponement shall not exceed thirty (30) days from the request for the postponement;
- and
- (c) Time limit for issuing a final order may be extended for the same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A hearing request shall be denied or dismissed if the:

- (a) Request does not meet the criteria specified in Section 3 of this administrative regulation;
  - (b) Appellant submits a written request to withdraw the hearing request; or
  - (c) Appellant or representative fails to appear for the scheduled hearing without:
    - 1. Notifying the cabinet prior to the hearing; or
    - 2. Establishing good cause for failure to appear as described in subsection (2) of this section, within ten (10) days.
- (2) Good cause for the delay of a hearing request or failure to appear at a hearing may be granted if the appellant:
- (a) Was away from home during the entire filing period;
  - (b) Is unable to read or comprehend the notice;
  - (c) Moved, resulting in a delay in receiving or failure to receive the notice;
  - (d) Or other household member had a serious illness;
  - (e) Was not at fault for the delay, as determined by the hearing officer; or
  - (f) Did not receive the notice.
- (3) The cabinet shall notify an appellant of the dismissal of a hearing request through the issuance of a Final Order of Dismissal by the Hearing Officer.

Section 9. Consolidation of Hearings. (1) A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the:

- (a) Issues of the hearings are based on the same or related circumstances; and
  - (b) Appellant receives prior notice of the hearings being combined.
- (2) If a fair hearing and an administrative disqualification hearing are combined, the timeframe for conducting an administrative disqualification hearing specified in 921 KAR 3:060, Section 4, shall be followed

(3) An appellant shall lose the right to a subsequent fair hearing on the amount of a claim if a combined hearing is held to determine:

- (a) The amount of the claim; and
- (b) If an intentional program violation occurred.

Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:

- (a) Individual issues of fact are not disputed; and
- (b) The issues relate to the same state or federal:
  - 1. Laws;
  - 2. Administrative regulations; or
  - 3. Policy.

(2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an appellant adversely affected by an action of the cabinet.

(2) The appellant shall be informed that an agency conference:

- (a) Is optional; and
  - (b) Shall not delay or replace the fair hearing process.
- (3) A fair hearing shall be dismissed if:
- (a) An agency conference leads to an informal resolution of the dispute; and
  - (b) The appellant makes a written withdrawal of the request for a hearing.
- (4) An agency conference shall be attended by the:
- (a) Appellant's caseworker;
  - (b) Local office supervisor; and
  - (c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the appellant or representative shall be provided the opportunity to:

- (a) Examine:
  - 1. The contents of the case file; and
  - 2. All documents and records to be used at the hearing;
- (b) Present the case or have the case presented by a representative or legal counsel;
- (c) Bring witnesses, friends, or relatives;
- (d) Present arguments without undue interference;
- (e) Submit evidence to establish the pertinent facts and circumstances of the case; and
- (f)1. Question or refute testimony or evidence; and
- 2. Cross-examine an adverse witness.

(2) Upon request, a copy of the portions of the case file that are relevant to the hearing shall be provided to the appellant at no charge.

(3) Confidential information, such as the following, shall be protected from release:

(a) Names of individuals who have disclosed information about the appellant's household; and

(b) The nature or status of pending criminal prosecutions.

(4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:

- (a) Confidential information as specified in subsection (3) of this section;

- (b) Documents, testimony, or records irrelevant to the hearing; and
- (c) Other information for which the appellant is not provided an opportunity to contest or challenge.

Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:

- (a) Is employed by the cabinet's Division of Administrative Hearings; and
- (b) Meets the criteria specified in KRS 13B.040 and 7 C.F.R. 273.15(m).
- (2) When conducting a hearing, a hearing officer shall:
  - (a) Have the authority set forth in KRS 13B.080;
  - (b) In accordance with 7 C.F.R. 273.15(m), order an independent medical assessment or professional evaluation:
    - 1. From a source:
      - a. Not associated with the original action; and
      - b. Agreeable to both the appellant and the cabinet; and
    - 2. If:
      - a. The hearing involves medical issues; and
      - b. The hearing officer considers it necessary;
  - (c) Maintain a hearing record in accordance with KRS 13B.130 and 921 KAR 3:050, Section 12;
  - (d) Issue an order:
    - 1. In accordance with KRS 13B.110; and
    - 2. As specified in Section 14 of this administrative regulation; and
  - (e) Issue a final order in accordance with Section (7) of this administrative regulation.

Section 14. Hearing Officer's Order. (1) After the hearing has concluded, the hearing officer shall draft an order that:

- (a) Summarizes the facts of the case;
- (b) Specifies the:
  - 1. Reasons for the order; and
  - 2. Address to which a party in the hearing may send an exception to the order; and
- (c) Identifies the:
  - 1. Findings of fact;
  - 2. Conclusions of law;
  - 3. Supporting evidence; and
  - 4. Applicable state and federal regulations; and
- (d) Addresses the parties' arguments.
- (2) A copy of the order shall be sent simultaneously to the:
  - (a) Appellant or representative; and
  - (b) Department for Community Based Services, Division of Family Support.
- (3) A hearing officer's order shall become a final order for an administrative hearing in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q) sixteen (16) days from the issuance of the order unless a written exception is filed pursuant to Section 15 of this administrative regulation.
- (4) If necessary, benefits of the appellant shall be adjusted:
  - (a) Based on a hearing officer's order that becomes a final order in accordance with subsection (3) of this section; and
  - (b) Within ten (10) days of the hearing officer's order becoming the final order.

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the

hearing officer's order, the party may file a written exception with the secretary or the secretary's designee.

(2) A written exception or rebuttal shall:

- (a) Be filed within fifteen (15) days of the date the hearing officer's order was mailed;
- (b) Be based on facts and evidence presented at the hearing;
- (c) Not refer to evidence that was not introduced at the hearing; and
- (d) Be sent to each other party involved in the hearing.

Section 16. Final Order. (1) Unless Section 14(3) of this administrative regulation applies, the secretary or the secretary's designee shall issue a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q).

(2) If necessary, benefits of the appellant shall be adjusted:

- (a) Based on the decision of the secretary or the secretary's designee; and
- (b) Within ten (10) days of the decision of the secretary or the secretary's designee.

(3) An aggrieved party may petition for judicial review in accordance with:

- (a) KRS 13B.140 to 13B.160; or
- (b) KRS 23A.010.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012; and

(b) The "Correspondence from the Office of Attorney General dated June 4, 2014", June 4, 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (8 Ky.R. 258; eff. 11-5-1981; Am. 9 Ky.R. 1261; eff. 6-1-1983; 15 Ky.R. 2320; 16 Ky.R. 179; eff. 8-5-1989; 18 Ky.R. 906; eff. 10-16-1991; 22 Ky.R. 407; eff. 9-20-1995; 2165; eff. 7-5-1996; Recodified from 904 KAR 3:070, 10-30-1998; TAm eff. 10-27-2004; TAm eff. 1-27-2006; 33 Ky.R. 134; 429; eff. 9-1-2006; 40 Ky.R. 2373; 41 Ky.R. 73; 283; eff. 9-5-2014; 2685; 42 Ky.R. 1216; eff. 11-6-2015; 45 Ky.R. 1845; eff. 5-3-2019.)